

(2019) 01 CAT CK 0080

In the Central Administrative Tribunal

Case No : Original Application No. 945 Of 2014

Ex-Servicemen Engineers Association And Ors

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 01 CAT CK 0080

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : M.K. Bhardwaj, Ch. Shamsuddin Khan, Yogesh Sharma

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. The applicants have filed the present OA seeking the following relief:-

"a) To call for the records of the matter.

b) To declare the action of respondents in not implementing the recommendations of Engineer-in-Chief by providing quota in the grade of AE for applicants/Ex-Servicemen appointed under DCRE quota as illegal and unconstitutional.

c) To direct the respondents to protect the service/seniority of applicants on their appointment under DCRE as JE and consider them for promotion to the post of AE by specifying quota.

d) To revert back 255 posts of AEs, held by erstwhile Subedal Majors (MES Militarised cadre) prior to 1988 for promotional avenues, for JEs (Civil/E&M/QS&C) recruited under DCRE quota.

e) To declare the action of respondents in neither providing quota in the grade of AE nor protecting service/seniority rendered in Indian Army against the same

post as illegal, arbitrary and unconstitutional and issue appropriate orders for redressal of grievances of applicants.

f) To direct the respondents to create specific quota in the grade of AE for Ex-Servicemen appointed under DCRE/applicants.

g) To allow the OA with cost.

h) Pass any other orders that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case".

2. Briefly the facts of the case, as stated by the applicants, are as follows:-

2.1 Military Engineering Service (MES) is an organization in which one third of the personnel are from the Military services and two third from the Civilian quota. Applicants no. 2-9 in the instant OA were initially recruited as Junior Commissioned Officers (JCOs) in the military component and, at the end of service, retired. Thereafter they were re-employed under 'Deputation-cum-Re-employment (DCRE) Scheme as per the terms and conditions given in the relevant rules. The applicants have referred to a number of amendments in the Recruitment Rules (RRs) of the organization. They claimed that because of this they are facing stagnation and have been denied promotion to higher scales. They submitted a number of representations and also sent a legal notice to the respondents in December, 2014.

2.2 As the applicants continued to pursue their case, the respondent no.2 recommended for amending the RR's to protect the interest of the re-employed JEs under the DCRE Scheme.

2.3 The recommendations of respondent no.2 were sent to respondent no.1 for necessary action with justification on 15.12.2010 but no action was taken.

2.4 The applicants have taken the ground that in the matter of career progression, differential treatment has been continuing without any justification which was neither in the interest of the applicants nor of the organization. In support of their contention they have relied on the decision of the Hon'ble Apex Court in the case of Union of India & Anr. v. Hem Raj Singh Chauhan & Ors., AIR 2010 SC 1682, wherein the Hon'ble Supreme Court has held that right of eligible employees to be considered for promotion is virtually a part of their Fundamental Right guaranteed under Article 16 of the Constitution of India and guarantee of a fair consideration in the matter of promotion under Article 14 of the Constitution. They have also relied on the following decisions of the Hon'ble Supreme Court:

i) U.T. Chandigarh & Ors. v. Avtaar Singh & Ors., [(2002) 10 SCC 432].

ii) Council of Scientific and Industrial Research & Anr. v. K.G.S. Bhatt & Anr., [(1989) 4 SCC 635].

iii) Dr. O.Z. Hussain v. Union of India, [(1990) Supp. SCC 688].

iv) A. Satyanarayana & Ors. v. S. Purshottam & Ors., [(2008) 5 SCC 416].

v) Vasudev Singh v. Union of India, [(2006) 12 SCC 753].

The applicants have submitted that they have been given step-motherly treatment without any valid justification and they are entitled for promotion to the grade of AE.

3. The respondents in their counter-reply have taken preliminary objections that the OA is liable to be dismissed on the ground of non-joinder of necessary affected parties and that the applicants have not challenged any impugned order passed by the respondents. They have further stated that applicant no.8 is a resident of Bahadurgarh, Distt. Jhajjar, Haryana and has not moved any petition for transfer before this Tribunal. Rather the OA is filed beyond the period of limitation prescribed under the rules.

3.1 The respondents have further submitted that the applicants having retired from the Military service and having joined the MES through the fresh recruitment cannot claim the benefit of the service rendered in military/army. They have also submitted that the applicants have now started the career afresh which will progress as per the extant rules.

3.2 The respondents have submitted that the judgments of the Hon^{ble} Apex Court referred to by the applicants in para-2.4 above are not applicable in the present case since the facts and circumstances of those cases are not similar to the present one.

4. The applicants have filed rejoinder to the reply filed by the respondents more or less reiterating their pleas taken in the OA.

5. We have perused the pleadings on record and heard the arguments advanced by the learned counsel for both the sides.

6. As for the cases cited by the applicants we find that they are not applicable to the facts and circumstances of this case.

7. To put it in a nutshell, the applicants have a grievance that they had reached at certain levels in their career while being a part of the military component of MES and now persons from the civilian side who were their juniors are occupying the same position and may even occupy positions higher to them. They claim that greater promotional avenues should be available to them based on their past service.

8. It must be realised that the applicants have joined this organization as fresh entrants and the existing rules do not provide for benefit of past service rendered in this organization in different capacities. It is clearly within the domain of the Executive to formulate policy and frame the rules taking a holistic view of the situation. This includes welfare of its employees as also the needs of the organization. Views and recommendations may be taken into account but they cannot have a binding force on the decision making authority. Any such exercise would necessary be extensive going into myriad aspects related to the

organisation and its personnel, especially so since it is a mixed organisation with both civilian and military components. Evidently this is not an area in which this Tribunal should get into.

9. We, therefore, find no reason to interfere in the instant matter. The OA is accordingly dismissed. No costs.